



The Gazette of India

**EXTRAORDINARY
PART II—Section 3
PUBLISHED BY AUTHORITY**

No. 15] NEW DELHI, WEDNESDAY, JANUARY 14, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 14th January 1953

S.R.O. 120.—Whereas the election of Shri Ram Bilas Sinha, as a member of the Legislative Assembly of the State of Bihar from the Barhara constituency of that Assembly has been called in question by an election petition duly presented under part VI of the Representation of the People Act, 1951. (XLIII of 1951), by Shri Bishnu Kumar Singh S/o Late B. Brij Mohan Singh, Advocate, Village Gaziapore, P.O. Sinha, P.S. Barhara, District Shahabad:

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition:

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

ELECTION TRIBUNAL, PATNA

PRESENT:

Shri Basu Prasad, Retired District Judge—Chairman.

Shri Hargobind Prasad Sinha, Retired District Judge. }
Shri Aditya Narayan Lal, Advocate. } Members

ELECTION PETITION No. 173 of 1952

In the matter of election to the Bihar State Legislative Assembly from the Barhara Constituency in the District of Shahabad.

Shri Bishnu Kumar Singh, son of Late Shri Brij Mohan Singh, by caste Rajput, by occupation Advocate High Court, Patna, resident of village Gaziaopore, P.O. Sinha, P.S. Barhara, District Shahabad—Petitioner.

Versus

1. Shri Ram Bilas Sinha, resident of village Sinha, P.O. Sinha, P.S. Barhara, District Shahabad.
2. Shri Bachaspati Tripathi, resident of village Barhara, P.O. and P.S. Barhara, District Shahabad.
3. Shri Chhabbi Nath Singh, resident of village Neknamtola, P.S. Barhara, District Shahabad.
4. Shri Harinandan Singh, resident of village Baghmajhawan, P.O. Naya Mohammadpore, P.S. Koilwar, District Shahabad, at present, Advocate, High Court, Patna.

5. Shri Ram Badan Rai, resident of village Kolrampur, P.O. Chakla Bazar, P.S. Barhara, District Shahabad.
6. Shri Ramchander Singh, resident of village Mohanpur Karja, P.O. and P.S. Barhara, District Shahabad.
7. Shri Dip Narayan Singh, resident of village Babura, P.S. Barhara, District Shahabad.
8. Shri Chandra Mani Ram, resident of village and P.O. Bhadwar, P.S. Koilwar, District Shahabad.
9. Shri Balmiki Pandey, resident of village Farna, P.O. Gundl, P.S. Barhara, District Shahabad.
10. Shri Brij Kumar Shukla, resident of village Balua, P.O. Tola Achrajjal, P.S. Barhara, District Shahabad—*Respondents.*

For the Petitioner:—Mr. Brajeshwar Prasad Sinha, Advocate.

For the Respondent No. 1:—Mr. Awdhesh Nandan Sahai, Advocate.

For the Respondent No. 2:—Mr. Lalit Bihari Siha, Advocate.

For the Respondent No. 4:—Mr. Birendra Prasad Siha, Advocate.

For the Respondent No. 10:—Mr. Angad Ojha, Advocate.

Shri Bishnu Kumar Singh, one of the candidates for election to the Bihar State Legislative Assembly from the Barhara Constituency in the District of Shahabad, has filed this election petition calling in question the election of Shri Ram Bilas Sinha (Respondent No. 1) and seeking a declaration that the election from the said Constituency is wholly void.

The petitioner states that he filed a nomination paper, completed in the prescribed form and containing a declaration specifying the following symbols chosen by him in the order of preference:—(1) "Weighing Scale"; (2) "Bicycle"; (3) "Elephant". The nomination paper was filed before the Returning Officer at Arrah on the 24th November, 1951. The Returning Officer, at the scrutiny of the nomination paper, which was held on the 26th November, 1951 rejected the nomination of the petitioner on the ground that he (petitioner) had chosen symbols in contravention of the Rules which amounted to choosing of no symbols at all. It is contended by the petitioner that his nomination was improperly rejected and that the result of the election has been materially affected by such improper rejection.

The respondent No. 1, who has contested the election petition, has filed a written statement contending that the nomination paper, presented by the petitioner, was not valid in as much as the choice of symbols made therein was in contravention of the rules having the force of law. It is, further, contended that the result of the election has not been materially affected by the rejection of the petitioner's nomination paper. Other objections raised in the written statement have not been pressed.

The respondent Nos. 2, 4 and 10 have also appeared, but have not contested the election petition.

Other respondents have not appeared, although they were duly served with notices.

The following issues arise for decision:—

ISSUES

1. Was the nomination of the petitioner improperly rejected? If so, has the result of the election been materially affected by such rejection?
2. Is the election in the Constituency in question wholly void?
3. Is the election of the respondent No. 1 void?
4. To what relief, if any, is the petitioner entitled.

FINDINGS

Before dealing with the question, whether the nomination of the petitioner was improperly rejected or not, it is necessary to state certain facts which are either admitted or proved.

The petitioner, Shri Bishnu Kumar Singh, filed one nomination paper (Ex. 6) on 24th November 1951, wherein he made a declaration as to choice of symbols which has already been stated above. He was an "Independent" candidate, not affiliated to any Party. The respondent No. 1 was a candidate set up by Akhil Bharatiya Ram Raj Parishad Party and he, having secured the largest number of votes, was declared duly elected from the Barhara Constituency. Under the Rules, each candidate for election was required to choose one symbol for his first preference out of the list of symbols for the time being in force and further to choose two other symbols out of that list for his second and third preferences respectively and a declaration in writing to this effect was necessary to be made in the nomination paper [Rule 5(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951]. Rule 5(1) provides "The Election Commission shall, as soon as may be after the commencement of these rules, by notification in the Official Gazette, publish a list of symbols and may in like manner add to or vary such list". The Proviso to Rule 5(2) lays down "The choice to be made by a candidate under this sub-rule shall be subject to such restrictions as the Election Commission may think fit to impose in that behalf".

The Election Commission, by means of Notification No. 32/1/51-Elec.II(2), dated the 8th September, 1951, in the *Gazette of India*, published a list of 25 symbols [Vide Ex. 2 and 2(a)]. Of these symbols, No. 8 is "Elephant", No. 17 is "Cycle" and No. 23 is "Scales". The same Notification provides, *inter alia*, that in exercise of the powers conferred by the Proviso to Sub-rule (2) of rule 5, the Election Commission directs that no candidate shall choose, except with the permission of the Returning Officer any of the symbols specified in items 1 to 14 of the above list. The symbols specified in items 1 to 14 had been reserved by the Election Commission for "All India Parties". Such reservation has been specified in Appendix 'B' of Ex. 2 and 2(a). The symbol "Elephant" had been reserved for All India Scheduled Castes Federation.

It appears that, besides "All India Parties", there were other parties which were active in individual States or in small number of States; these parties were described as "State Parties". The Election Commission, by means of a Press Note, issued as early as July 30, 1951, declared that the "State Parties would be assigned symbols by the Chief Electoral Officers of the States where they actually functioned" (Vide Ex. IV). The Election Commission reiterated the same declaration in its letter dated 10th September, 1951, addressed to the Chief Electoral Officer, Bihar (Vide Ex. 1).

The Chief Electoral Officer, Bihar, also published, by means of a Press Note dated November 7, 1951 (Ex. VI), the list of 26 symbols, one of which, namely, No. 15 "Bow and Arrow" was not intended for Bihar. This Press Note, further, announced that the symbols Nos. 1 to 14 had been allotted by the Election Commission to different parties constituted on "All India Basis", whereas five symbols, namely, "Railway Engine", "Cart", "Cock", "Pitcher" and "Scales" had been allotted by him (Chief Electoral Officer, Bihar) to parties constituted on "State Basis". The remaining six symbols, namely, "Cycle", "Boat", "Flower", "Ladder", "Camel" and "A twig with two leaves" remained free for the choice of "Independent" candidates. It appears that, subsequently, "Pitcher" was made a free symbol and "Cycle" a reserved symbol for Chota Nagpur-Santal Parganas Janta Party. This change was effected by the Chief Electoral Officer, Bihar. The letter (Ex. VII) shows that "Cycle" was transferred to the list of allotted or reserved symbols on the 15th November, 1951. The Chief Electoral Officer, Bihar, issued letters to all Returning Officers on the 17th November, 1951, giving a list of allotted symbols, 19 in number and another list of free symbols, 6 in number [Vide Ex. 2(c)]. It, thus, appears that all the 3 symbols chosen by the petitioner, namely, "Scales", "Cycle" and "Elephant", were in the list of allotted or reserved symbols and were not free symbols on the 17th November, 1951.

The Chief Electoral Officer, Bihar, effected another change in the classification of symbols on the 28th November, 1951, by making "Scales" a free symbol (Vide Ex. A). This change was, however, effected after the nomination of the petitioner was rejected by the Returning Officer.

From what has been stated above, it will appear that on the date when the petitioner filed his nomination paper the 3 symbols chosen by him were not "free" symbols, but were "reserved" symbols intended for candidates from certain parties. The petitioner, being an "Independent" candidate, was required to choose 3 symbols out of the list of "free" symbols. This, he failed to do.

It has been contended by Mr. Awdhesh Nandan Sahai, Advocate for respondent No. 1, that there was failure on the part of the petitioner to comply with the provisions of Section 33 of the Representation of the People Act, 1951, and, therefore, the Returning Officer was justified in rejecting his nomination. Section 36(2), clause (d) of the Act empowers the Returning Officer to refuse a nomination on the ground that there has been any failure to comply with any of the provisions of Section 33 or Section 34. Let us, therefore, examine whether there has been any failure on the part of the petitioner to comply with any of the provision of Section 33. Section 33(1) requires that each candidate shall deliver to the Returning Officer a nomination paper completed in the prescribed form. Sub-Section (3) of Section 33 lays down that every nomination paper delivered under Sub-Section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under this Act for the appointment and who shall be named in the declaration, and by such other declarations, if any, as may be prescribed and no candidate shall be deemed to be duly nominated unless such declaration is, or all such declarations are, delivered along with the nomination paper. Rule 5(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, requires that every nomination paper shall be also accompanied by a declaration in writing specifying the particular symbol which the candidate has chosen for his first preference out of the list of symbols for the time being in force and also specifying two other symbols out of that list which he has chosen for his second and third preferences respectively. In making such choice, the candidate has to observe the restrictions imposed by the Election Commission. As the petitioner made wrong choice of symbols in contravention of the provisions of law, his nomination paper will not be deemed to have been completed in the prescribed form and he will not be deemed to have been duly nominated. There was no legal and valid declaration as to the choice of symbols and, consequently, there was failure on the part of the petitioner to comply with the mandatory provisions of Section 33. The nomination paper of the petitioner was, therefore, liable to be rejected by the Returning Officer and he rightly rejected it. In *Amir Ali Khan Versus Mohammad Shamsul Huq and others* (reported in Indian Election Cases by Sen and Poddar, 1951 Edition, at page 1043) it has been held that (i) selection by a candidate of a symbol which is not in the prescribed list of symbols is no selection; it is a failure to complete the nomination paper in the form specified and to comply with the provisions of law, entailing rejection of the nomination paper, and (ii) selection of symbols in the alternative, such as "sheaf of paddy or hurricane", is no selection of a symbol and is not in conformity with law; it is a failure to complete the nomination paper in the form specified, and such nomination should be rejected. In the above case, the Rules required selection of only one symbol out of the list of prescribed symbols. There is yet another case, *Gauri Shanker Prasad Versus Thakur Hanuman Singh* (reported in Indian Election Petitions by Jagat Narain, Vol I, at page 9), in which the Election Tribunal set aside the election on the ground that the candidate concerned had appointed more than one election agent in contravention of the express provisions of the Rules. It is noteworthy that the provisions of the Rules regarding appointment of election agent are similar to the provisions of the Rules regarding selection of symbols. The above two cases, thus, support the view that wrong choice of symbols, in contravention of the Rules, renders the nomination paper invalid and liable to be rejected.

It has been contended by the petitioner's advocate, Mr. Brajeshwar Prasad Sinha, that according to the Proviso to Sub-rule (2) of Rule 5 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the restrictions on the choice of symbols could be imposed by the Election Commission only and that this power could not be legally delegated to any other authority and that it was not so delegated. Reliance is placed on the decision of the Federal Court in *Jatindra Nath Gupta Versus the Province of Bihar*, reported in Patna Law Times, Volume XXX, at page 453. The above decision supports the view that the power to legislate cannot be legally delegated to another authority. But, here, it is not a legislative power, but an executive power, that was delegated by the Election Commission to the Chief Electoral Officers of the States. Such delegation, in our view, was not illegal.

The next question for consideration is whether the Election Commission delegated the power to impose restrictions on the choice of the symbols to the Chief Electoral Officer of Bihar. The letter (Ex. 1) dated the 10th September, 1951, from the Election Commission to the Chief Electoral Officer, Bihar, clearly shows

such delegation of power. From the above letter it appears that the Election Commission reserved 14 symbols for candidates of different political parties on "All India Basis" and that it did not propose to reserve any more symbols for any other parties direct. In paragraph 2 of the letter there is a clear recital to the effect that the Chief Electoral Officer of the State shall reserve symbols for the "State Parties". It is noteworthy that the Election Commission indicated its intention to delegate such power to the Chief Electoral Officers of the States as early as July 30, 1951, by means of a Press Note (Vide Ex. IV). It cannot, therefore, be doubted that the Election Commission did delegate its power to impose restrictions on the choice of symbols to the Chief Electoral Officer, Bihar, and that the latter, accordingly, reserved the symbols, "Scales" and "Cycle", for certain "State Parties".

Mr. Brajeshwar Prasad Sinha has, next, contended that the restrictions imposed on the choice of symbols were required to be published in the Official Gazette. Although Sub-Rule (1) of Rule 5 enjoins the publication of the list of symbols by notification in the Official Gazette, the Proviso to Sub-Rule (2) does not say that the imposition of restrictions on the choice of symbols shall be likewise published. No particular mode is prescribed for publication of such restrictions. Our attention has been drawn to the fact that the Election Commission published in the Official Gazette the restrictions imposed by it on the choice of symbols along with the list of symbols [Vide Ex. (3)]. It may be that the Election Commission considered it prudent to publish in the Official Gazette the restrictions also, but we are definitely of the view that the law did not enjoin such publication in the Official Gazette and the non-publication of the restrictions in the Official Gazette did not render the imposition of the restrictions null and void.

The evidence on the record shows that the Election Commission published the reservation of the symbol, "Elephant", in the Official Gazette on 8th September 1951 (Vide Ex. 3), while the Chief Electoral Officer published the reservation of the symbol "Scales" by means of a Press Note dated 7th November 1951 (Vide Ex. VI). The reservation of the symbol, "Cycle", by the Chief Electoral Officer was not published by means of a Press Note (Vide Ex. VIII), but the Chief Electoral Officer communicated the reservation of the symbol, "Cycle", to all Returning Officers on 17th November 1951 [Vide Ex. 2(c)]. The petitioner had surely means of getting knowledge of the fact that "Cycle" was also a reserved symbol, and not a free symbol, on the date when he presented his nomination paper.

There is no allegation in the election petition that the petitioner was not aware of the fact that the symbols chosen by him were reserved symbols. In paragraph 5 of the election petition it is alleged that no restriction whatsoever was imposed by the Election Commission with regard to the symbols, "Scales" and "Cycles". Paragraph 6 recites that "Cycle" was reserved for the Janta Party, but it set up no candidate in Shahabad District. Paragraph 7 contains a recital to the effect that the symbol, "Scales", was never reserved for any contesting political party. The allegation in paragraph 8 is that, although the symbol, "Elephant", was reserved for an All India Party, no candidate was set up by that party in Shahabad District. It has already been stated above that the symbol, "Elephant", had been reserved by the Election Commission for all India Scheduled Castes Federation. The Chief Electoral Officer, Bihar, reserved the symbol, "Scales", for Petty Zamindars' Association and the symbol, "Cycles", for Chhotanagpur-Santal Parganas Janta Party [Vide Ex. 2(c)]. From the telegram (Ex. 8) sent by the Election Commission to the Chief Electoral Officer, Bihar, it appears that a reserved symbol could be made available to an Independent candidate, only when the Party concerned did not put up a candidate anywhere in the whole State. There is no allegation in the election petition far less any evidence, that the parties, for whom the symbols, "Elephant", "Scales" and "Cycle", were reserved, did not set up any candidate anywhere in the whole State of Bihar. The mere fact that the parties concerned did not set up candidates in the district of Shahabad was not sufficient to make the symbols available for an Independent candidate. From the evidence of Mr. Nand Lal Sinha (P.W.1) it appears that the symbol, "Scales", was first reserved for Petty Zamindars' Association in Bihar, but when that Party, subsequently, withdrew from the field, that symbol was made a free symbol. This change, as stated above was effected on 28th November, 1951, i.e., after the nomination of the petitioner was rejected. It seems that the symbol, "Scales", was made a free symbol, after the scrutiny of the nomination papers, for assignment, if necessary, to an Independent candidate, but it was not a free symbol till the date of the scrutiny of the nomination papers. As regards Janta Party, the evidence of Mr. Nand Lal Sinha shows that the party did put up candidates in

Chhotanagpore and Santal Parganas. The fact that no candidate was set up by the Janta Party or by the All India Scheduled Castes Federation in the district of Shahabad did not make the symbols, "Cycle" and "Elephant", free symbols for an independent candidate in the State of Bihar.

It is contended by the petitioner that the assignment of symbols was a matter within the discretion of the Returning Officer who was competent to assign a symbol even outside the list of 3 symbols selected by a candidate. Assignment of symbols by the Returning Officer was an act which was performed some time after the scrutiny of the nomination papers. From Rule 10 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, it appears that, whereas the Returning Officer could, under certain circumstances, assign to a duly nominated candidate a symbol outside the list of symbols selected by him, he had, nevertheless, to consider the choice regarding symbols as expressed by the candidate in his declaration in the nomination paper and to conform, as far as practicable, to his choice. The choice of symbols by a candidate was, therefore, not an unimportant or insignificant matter.

The learned advocate for the petitioner has contended before us that defect in the choice of symbols was only a technical defect, not of a substantial character, and the Returning Officer was not justified in rejecting the nomination paper on the ground of such technical defect in view of the provisions of Sub-section (4) of Section 36 of the Representation of the People Act, 1951. Sub-section (4) runs as follows, "The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character". Although we hold that this Sub-section controls the foregoing provisions laid down in clauses (a) to (e) of Sub-section (2), we are clearly of the opinion that the wrong choice of symbols in contravention of the Rules is not a technical defect, but is a material irregularity invalidating the nomination. This was exactly the view which was expressed by the Election Tribunal in the case, *Amir Ali Khan Versus Shamshul Huq*, which has been referred to above. In the present case, the petitioner mentioned in his nomination paper (Ex. 6) "Weighing Scale" as the symbol of his first preference and "Bicycle" as the symbol of his second preference. In the list of symbols published by the Election Commission, we find "Scales" (and not "Weighing Scales") and "Cycle" (and not "Bicycle"). Such defects in naming the symbols are, no doubt, of technical nature and they cannot invalidate the nomination paper. But we are definitely of the opinion that wrong choice of symbols, in infringement of the Rules, is not a defect of technical nature, within the meaning of Sub-section (4) of Section 36 of the Act.

The learned advocate for the petitioner has invited our attention to the fact that the restriction imposed by the Election Commission under the Proviso to Sub-Rule (2) of Rule 5 was "that no candidate shall choose except with the permission of the Returning Officer any of the symbol specified in item Nos. 1 to 14 of the list (or, in other words, any of the symbols reserved by the Election Commission for All India Parties)". The purpose of the above restriction appears to be that the Returning Officer, before permitting a candidate to choose any such symbol, had to be satisfied that the candidate concerned belonged to the Party for whom that symbol was reserved. In the present case, the question of the petitioner seeking permission of the Returning Officer does not arise for the petitioner, admittedly, did not belong to any of the parties for whom the symbols selected by him had been reserved.

From the above discussions, it is manifestly clear that there was failure on the part of the petitioner to comply with the mandatory provisions of Section 33 of the Act and that the Returning Officer, therefore, rightly rejected his nomination. We, therefore, hold that the nomination of the petitioner was not improperly rejected.

In view of the above findings, the question whether the result of the election has been materially affected by the rejection of the petitioner's nomination does not arise. Even assuming that the nomination of the petitioner was improperly rejected, the evidence on the record indicates that the result of the election has not been materially affected by such rejection. It is, no doubt, a well settled principle that if the nomination of a candidate is improperly rejected, the result of the election is presumed to have been materially affected thereby, inasmuch as, the entire electorate is deprived of its right to vote for a candidate who was qualified to stand for election (*Sardar Basant Singh Versus Sardar Rattan Singh*, reported in Indian Election Cases by Doabia, Vol. I, page 80). In the present case, however, the said presumption has been rebutted. Both parties have adduced

evidence on this point and the following important facts emerge out of that evidence. The petitioner, as will appear from his conduct, was not serious about his election. On the contrary, he worked for the Congress candidate, Shri Hari Nandan Singh (Respondent No. 4). He has admitted in his evidence that he acted as the counting agent of Shri Hari Nandan Singh. He has also said in his evidence that, before filing the nomination paper, he did not approach any voter in any village. From his evidence it further appears that he has not taken any part in public activities up till now.

The Respondent No. 1 was a candidate on behalf of Akhil Bhartiya Ram Raj Parishad and his evidence indicates that he has been taking part in public activities for some years past. At the election in question, he secured about 4,000 votes which was the largest number of votes polled by any candidate in that Constituency. The Respondent No. 4, who was a candidate on behalf of the Congress Party, a well organised Party in this Country, polled about 3,600 votes. The Respondent No. 5, who represented the Democratic Front Party, got about 2,600 votes. The other candidates polled even lesser votes. It will, thus, appear that the real contest at the election was between the Respondent No. 1 and the Respondent No. 4. Ram Nagina Singh (witness No. 1 for the contesting respondent) has said in his evidence that, barring respondents Nos. 1 and 4, all the other candidates were unpopular in that Constituency. All these facts and circumstances lead to the conclusion that the result of the election would not have been materially affected if the petitioner had also contested the election. The second part of this issue is, therefore, also answered in the negative.

Issue Nos. 2, 3 and 4—From our findings on issue No. 1, it follows that the election in the Constituency in question is not void, that the election of the Respondent No. 1 is also not void and that the petitioner is not entitled to any relief.

The result, therefore, is that the election petition fails.

ORDER

The election petition is dismissed. The petitioner shall bear his own costs and shall pay Rs 250 (Two hundred fifty) as costs to the contesting respondent No. 1.

1. (Sd.) **BASU PRASAD, Chairman.**
2. (Sd.) **HARGOBIND PRASAD SINHA, Member.**
3. (Sd.) **ADITYA NARAYAN LAL, Member.**

PATNA;

The 9th January, 1953.

[No. 19/173/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.

